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BEFORE THE ARIZONA CORPORATION COMMISSION

2010 MAR -9 A 10: 35

Arizona Corporation Commission

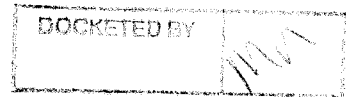
COMMISSIONERS

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED

MAR - 9 2010

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP



In the matter of:

KYLE SCHMIERER, individually and doing
business as AMADIN,

Respondent.

DOCKET NO. S-20651A-09-0029

**SECURITIES DIVISION'S POST-
HEARING BRIEF**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") submits its post-hearing brief as follows:

I. PRELIMINARY ISSUES

A. Procedural History

On January 29, 2009, the Division filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("TC&D"). The TC&D alleged that Respondent KYLE SCHMIERER ("SCHMIERER") engaged in acts, practices and transactions that constituted violations of the Securities Act of Arizona, A.R.S. §§44-1841 and 44-1842. SCHMIERER may be referred to as "Respondent."

On February 19, 2009, Respondent filed a request for hearing.

On February 26, 2009, Respondent filed an Answer.

Pursuant to the Fifth Procedural Order, the August 31, 2009, hearing was continued to January 21, 2010. Respondent failed to appear for the January 21, 2010, administrative hearing. (**Hearing Transcript "H.T." p. 5:17 - 19**). Division Exhibits S-1 – S-10 and S-12 – S-14 were

1 admitted into evidence. (H.T. p. 56:6)(H.T. p. 30:1 - 2)(H.T. p. 53:11 - 12)(H.T. p. 58:25 – p.
2 59:1 - 6).

3 **B. Jurisdiction**

4 The Commission has jurisdiction to enforce the provisions of the Securities Act of Arizona
5 (the “Act”), A.R.S. §44-1801 *et. seq.* (See Article XV of the Arizona Constitution). The Act
6 prohibits the offer for sale or sale of unregistered securities within or from Arizona, A.R.S. §44-
7 1841; and transactions involving the sale, purchase or offer to sell or buy any securities by
8 unregistered dealers or salesmen within or from Arizona, A.R.S. §44-1842.

9 At all relevant times, Respondent resided in Arizona. (SCHMIERER’s Request for
10 Hearing and Answer) (H.T. p. 12:12 - 13). ATMA Study Film Production LLC had their
11 principal place of business and bank account in Phoenix, Arizona. (Exhibits S-3 and S-14 Exhibit
12 A item 4). Amadin, the registered trade name of SCHMIERER, had its business address in
13 Phoenix, Arizona. (Exhibit S-2).

14 **C. Facts**

15 1. On or about December 22, 2006, SCHMIERER filed an Application for
16 Registration of Trade Name for Amadin with the Arizona Secretary of State. (H.T. p. 11:18 – p.
17 12:5)(Exhibit S-2). As of November 26, 2008, ATMA Study Film Productions LLC is a Wyoming
18 limited liability company. (H.T. p. 26:21 – p. 27:7)(Exhibit S-3). SCHMIERER is listed as the
19 manager of ATMA Study Film Productions LLC. (Exhibit S-3).

20 2. Since at least 2008, SCHMIERER offered several different “securities”
21 simultaneously using a number of different websites. (H.T. p. 12:22 – 25)(Exhibits S-3 – S-
22 10)(H.T. p. 56:16 – 21)(Exhibit S – 12)(Exhibit S-14 p. 15:25 – p. 16:2). The websites listed
23 SCHMIERER’s location as “Phoenix, AZ” or listed an Arizona telephone number to obtain further
24 information. (Exhibits S-6; S-8; S-9; and S-12).

25 3. SCHMIERER, through Amadin and ATMA, offered investment contracts to raise
26 capital to finance the production of feature films or “entertainment projects.” (H.T. p. 15:19-23)

1 (H.T. p. 18:12 - 16)(H.T. p. 25:7 - 12)(H.T. p. 29:10 - 17)(H.T. p. 34:5 - 8) (Exhibits S-5 – S-10
2 and S-12 – S-13). SCHMIERER's offerings were as follows:

- 3 a) Sought \$3 million for a "very safe" and "very high return" investment. (H.T.
4 p. 18:6-11)(Exhibits S-6, S-7, S-8 and S-9)(Exhibit S-12 ACC000097). A
5 guaranteed return in 50 weeks. (H.T. p. 18:17-22)(H.T. p. 21:13-16) (H.T.
6 p. 25:13-14)(Exhibits S-6, S-7, S-8 and S-9)(Exhibit S-12 ACC000097)
7 (H.T. p. 58:14 – 18)(Exhibit S-14 p. 17:14-17).
- 8 b) Sought \$300,000 with a promise of \$600,000 in six to twelve months. (H.T.
9 p. 26:8-14)(H.T. p. 28:18-24)(Exhibit S-9 and S-10)(Exhibit S-12
10 ACC000095; ACC000106). The sales proceeds would be used to pay legal
11 fees, due diligence costs, processing fees, development costs and other
12 expenses. (H.T. p. 28:11-16)(Exhibit S-10)(Exhibit S-12 ACC000106).
- 13 c) Sought \$150,000 to pay application and legal fees. (H.T. p. 37:13-
14 17)(Exhibit S-12 ACC000095)(H.T. p. 58:9 – 13)(Exhibit S-14 p. 17:11-
15 13).
- 16 d) Sought \$350,000 for collateral to leverage a loan. (H.T. p. 37:20-
17 22)(Exhibit S-12 ACC000095)(H.T. p. 58:4 – 8)(Exhibit S-14 p. 17:7-10).
18 Investors were promised double their money back when the loan was
19 received. (H.T. p. 37:23- p.38:5)(Exhibit S-12 ACC000095)(Exhibit S-
20 10).
- 21 e) Sought \$800,000 with a promise of 100 percent return on investment within
22 six to twelve months. (H.T. p. 38:9-16)(Exhibit S-12 ACC000095;
23 ACC000097)
- 24 f) Offered equity investments to investors through the offer of limited liability
25 company interests. (H.T. p. 38:20-25)(Exhibit S-12 ACC000095;
26 ACC000103). One unit could be purchased for \$100,000. (H.T. p. 38:20-

1 25)(Exhibit S-12 ACC000095; ACC000103). The limited liability company
2 would be under "total control" of SCHMIERER. (Exhibit S-12
3 ACC000105). The investor would have "no say in the running of the limited
4 liability company. (Exhibit S-12 ACC000105). Sales proceeds would be
5 placed in an escrow account and held until the full amount was raised. (H.T.
6 p. 39:1-5)(Exhibit S-12 ACC000095). If the full amount was not raised, the
7 funds would be returned to the investors. (H.T. p. 39:1-5)(Exhibit S-12
8 ACC000095; ACC000103). This program included a "buyout" of investor's
9 interests that promised a 100 percent return on investment. (H.T. p. 40:22 -
10 25)(Exhibit S-12 ACC000103; ACC000104). SCHMIERER specifically
11 stated that this investment was a security that had not been registered under
12 the Securities Act of 1933 or any applicable state securities laws. (Exhibit
13 S-12 ACC000104).

- 14 g) Offered investments in "units" secured though a "POM" (private offering
15 memorandum). (H.T. p. 49:14-17)(Exhibit S-13 ACC000004). According
16 to the offering document, units were \$10,000 each. (Exhibit S-13
17 ACC000004). There were 1000 units available. (H.T. p. 49:7 -13)(Exhibit
18 S-13 ACC000004). In the "POM", SCHMIERER represented that the
19 investment funds would be used for the production, marketing and
20 distribution of an independent feature film. (H.T. p. 49:7 -13)(Exhibit S-13
21 ACC000004). The "POM" further stated that the funds would be placed into
22 a "third party escrow account" until the minimum budget was raised.
23 (Exhibit S-13 ACC000036; ACC000047). The "POM" stated that, after a
24 thorough analysis, the film was "conservatively projected to provide a 213%
25 ROI." (Exhibit S-13 ACC000047).

1 4. SCHMIERER had full control over the investments. According to the “*Initial*
2 *Development Investor Contract to invest in “The ATMA Study” feature film project,*” “[t]he
3 investors are further limited in that they have no say in the running of the limited liability company.
4 . . . Kyle Schmierer maintains total control over the running of the business and total artistic control
5 over the development, financing, and production of the motion picture.” (H.T. p. 42:1 -
6 17)(Exhibit S-12 ACC000103). Further, according to Executive Summary provided to an offeree,
7 “Kyle Schmierer . . . shall retain all creative and artistic control of the motion pictures . . . With
8 this full control also comes full and complete responsibility for the film and to you the investor.”
9 (Exhibit S-13 ACC000047). Respondent states in his offering documents, “[t]he Manager (Kyle
10 Schmierer) assumes total control over the running of the ‘company’ . . . [and] maintains total
11 control over the running of the business and total artistic control over the development and
12 production of the film . . . This includes spending money, maintaining the books, hiring
13 personnel, assembling components of the film package . . . and all other activities necessary for
14 completion of the project.” (Exhibit S-12 ACC000105). “The ‘Investor’ is further limited in that
15 he has no say in the running of the limited liability company.” (Exhibit S-12 ACC000105).

16 5. On the numerous websites that were used to solicit investors, SCHMIERER asserted
17 that he was seeking “accredited investors.” (Exhibits S-5 – S-10 and S-12 – S-13). When
18 responding to an inquiry by an Arizona offeree, SCHMIERER inquired whether the potential
19 investor was accredited (H.T. p. 33:11 - 15)(Exhibit S-12 ACC000097). The offeree responded by
20 asking SCHMIERER “what is accredited?” (H.T. p. 34:16 – 17)(Exhibit S-12 ACC000097). At
21 no time did the offeree represent that she was accredited. (H.T. p. 34:9 – 12; p. 48:9 – 12; p. 62:4
22 – 25 - p. 63:1 - 10)(Exhibit S-12 ACC000097). At no time did SCHMIERER confirm that the
23 offeree was, in fact, accredited, nor did he inquire into the financial condition of the offeree other
24 than to state that the investment was for accredited investors. (H.T. p. 64:14 – 21; p. 62:4 – 25 - p.
25 63:1 - 10). SCHMIERER continued to provide the offeree details of the investment and provided
26 the business plan and offering memorandum without a reasonable belief that the offeree was

1 accredited. **(Exhibits S-12 and S-13)**. None of the websites or the emails between the Respondent
2 and the offeree had a disclaimer that the securities were not being offered in Arizona. **(Exhibits S-**
3 **6 – S-10 and S-12 through S-13)**. There are no known actual investors in the securities offered by
4 SCHMIERER. **(H.T. p. 67:15 - 23)**.

5 6. The Respondent offered “investors” the opportunity to invest various amounts
6 which would be pooled to fund an entire feature film project. **(Exhibits S-6 – S10; S-12 and S-13)**.
7 According to the offering documents, Respondent was offering investors “units” to purchase.
8 **(Exhibit S-12 ACC000103)**. Investors were able to purchase any or all “units.” **(Exhibit S-12**
9 **ACC000103)**. Respondent sought investors to purchase one “unit” or up to 1,000 “units.” **(Exhibit**
10 **S-13 ACC000004)**.

11 7. In some instances, the Respondent sought one investor to fund one feature film
12 project. **(Exhibits S-6 – S10; S-12 and S-13)**. The Respondent’s potential profits were tied to the
13 investor’s potential profits. The Respondent received compensation and, also, received a
14 percentage of the profits from the feature film. **(Exhibit S-12 ACC000104; Exhibit S-13**
15 **ACC000041 and ACC000052)**.

16 8. Neither SCHMIERER nor his entities were registered as a dealer or salesman (or
17 exempt from registration) as required under the Securities Act. A.R.S. §44-1842. **(H.T. p. 55:11 -**
18 **13)(Exhibit S-1)(H.T. p. 56:24 – p 57:5)(Exhibit S-14 p. 16:3 - 6)**. None of the securities were
19 registered or exempt from registration. **(H.T. p. 55:20 - 24)(Exhibit S-1)**.

20 **II. THE VARIOUS INVESTMENTS OFFERED BY SCHMIERER ARE SECURITIES.**

21 **A. The Securities Offered by SCHMIERER Must Be Registered.**

22 Under the Act, it is unlawful to sell or offer for sale any securities unless the securities have
23 been registered or unless there is an applicable exemption from registration. A.R.S. §44-1841. The
24 facts above indicate that SCHMIERER offered securities in the form of investment contracts. The
25 securities were not registered or exempt from registration. **(H.T. p. 55:20 - 24)(Exhibit S-1)**.
26 Furthermore, SCHMIERER, nor his entities, were registered as a dealer or salesman (or exempt

1 from registration) as required under the Securities Act. A.R.S. §44-1842. (H.T. p. 55:11 -
2 13)(Exhibit S-1)(H.T. p. 56:24 – p 57:5)(Exhibit S-14 p. 16:3 - 6).

3 **1. The Various Investments offered by SCHMIERER are “Securities”.**

4 Investment contracts are included in the definition of securities. A.R.S. § 44-
5 1801(26)(“Security means . . . investment contract”) The core definition of an investment
6 contract was set forth in *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946). Under the *Howey* test, an
7 investment contract exists if it involves (1) an investment of money or other consideration; (2) in a
8 common enterprise; and (3) with the expectation of profits earned solely from the efforts of
9 others.¹ Arizona courts and the Commission have adopted, the *Howey* test as the basis for
10 investment contract analysis, although more recent case law has served to expand the definition of
11 investment contract. Citing *Howey*, Arizona courts agree that the definition of securities including
12 investment contracts embody “a flexible rather than static principle, one that is capable of
13 adaptation to meet the countless and variable schemes devised by those who seek to use the money
14 of others on the promise of profits.” *Nutek Information Systems, Inc. v. Arizona Corporation*
15 *Commission*, 194 Ariz. 104, 108, 977 P.2d 826 (App.1998); *Rose v. Dobras*, 128 Ariz. 209, 211,
16 624 P.2d 887 (App.1981). In accordance with this view, Arizona courts have developed flexible
17 interpretations for each of the three prongs set forth in *Howey*.

18 The first prong of the *Howey* test - the investment of money - is satisfied in this case by the
19 Respondent seeking the investment of money. Although no investors invested in any of the
20 securities offered by the Respondent, the Respondent sought the investment of money by
21 specifying the investment must be in U.S. dollars. (Exhibits S-6 – S10; S-12 and S-13).

22 With respect to the second element of *Howey*, “[t]wo tests have been developed to
23 determine the existence of a common enterprise in order to satisfy the second prong of the *Howey*
24 test: (1) the horizontal commonality test and (2) the vertical commonality test.” *Daggert v. Jackie*

25
26 ¹ The *Howey* case originally used the phrase “solely from the efforts of others,” however, this language was later
modified to “substantially” in *SEC v. Glenn W. Turner Enterprises*, 474 F.2d 476, 482 (9th Cir. 1973).

1 *Fine Arts, Inc.*, 152 Ariz. 559, 565, 733 P.2d 1142 (App. 1986). Arizona courts have held that
2 commonality will be satisfied if either horizontal or vertical commonality can be shown. *Id.* at
3 566. Horizontal commonality requires a pooling of investor funds collectively managed by a
4 promoter or third party. *Id.* at 565. To establish vertical form of commonality, a positive
5 correlation between the potential profits of the investor and the potential profits of the promoter
6 need only be demonstrated. *Id.* at 566.

7 In this case, the offerings meet the requirements of both horizontal and vertical
8 commonality tests. The Respondent offered investors the opportunity to invest various amount of
9 money which would be pooled to fund an entire feature film project. **(Exhibits S-6 – S10; S-12**
10 **and S-13).** In some instances, the Respondent sought one investor to fund one feature film project.
11 **(Exhibits S-6 – S10; S-12 and S-13).** In those instances, the offering met the vertical commonality
12 test. The Respondent's potential profits were tied to the investor's potential profits. The
13 Respondent received compensation and also a percentage of the profits from the feature film.
14 **(Exhibit S-12 ACC000104; Exhibit S-13 ACC000041 and ACC000052).**

15 The third and final prong of the *Howey* test has evolved since it was first handed down over
16 50 years ago. In order to satisfy the third *Howey* prong in Arizona, one must only establish that the
17 efforts made by those other than the investors were the undeniably significant ones, and were those
18 essential managerial efforts that affected the failure or success of the enterprise. *Nutek*, 194 Ariz.
19 at 108. According to the offering documents provided to an offeree, SCHMIERER has total
20 control over the operation of the business including "development, financing and production of the
21 picture. It also includes spending money, maintaining books, hiring personnel, scheduling
22 production, negotiating contracts, and all other activities necessary for completion of the project."
23 **(Exhibits S-12 ACC000105 and S-13 ACC000047).** The final prong of the *Howey* test has been
24 met.

25 Thus, the securities offered by Respondent satisfy all three elements of the *Howey* test. The
26 various investment opportunities offered by Respondent are securities in the form of investment

1 contracts and must be registered under A.R.S. § 44-1841 or qualify for an exemption from
2 registration under the Act.

3 **2. SCHMIERER Was Required to Be Registered as a Dealer and/or Salesman.**

4 Pursuant to A.R.S. §44-1842, it is unlawful for any dealer to offer to sell securities within
5 or from Arizona unless the dealer or salesman is registered under the Act. Neither the Respondent
6 nor Amadin was registered as a dealer or salesman under the Act². Nor were there any applicable
7 exemptions from registration.

8 ATMA Study Film Production LLC would meet the definition of dealer pursuant to A.R.S.
9 § 44-1801(9). Pursuant to A.R.S. § 44-1801(22), as manager of the ATMA Study Film Production
10 LLC, SCHMIERER was authorized to act on its behalf to sell securities to finance the making of a
11 feature film. (**Exhibit S-12 ACC000105**). According to the offering documents, SCHMIERER
12 was authorized to maintain “total control over the running of the business . . . includes all other
13 activities necessary for completion of the project.” (**Exhibit S-12 ACC000105**). SCHMIERER
14 was not registered as a securities salesman under the Act nor did he meet any exemptions from
15 registration. (**Exhibit S-1**).

16 The other investment contracts offered by SCHMIERER were securities under the Act.
17 SCHMIERER engaged directly or indirectly in Arizona in the business of offering securities. § 44-
18 1801(9). SCHMIERER was not registered as required under A.R.S. §44-1842 nor did
19 SCHMIERER produce any evidence or testimony to support any exemption.

20 **B. The Burden Is On The Person Claiming an Exemption To Prove It Is Applicable.**

21 Pursuant to A.R.S. §44-2033, in any action, when a defense is based upon any exemption
22 under the Act, the burden of proving the exemption exists shall be upon the party raising the
23 defense. “The general rule governing the burden of proof in Arizona is that a party who asserts the
24 affirmative of an issue has the burden of proving it.” *Black, Robertshaw, Frederick, Copple &*
25

26 ² ATMA Study Film Production LLC did not register the limited liability interests under the Act nor was it registered
as a dealer.

1 *Wright, P.C. v. U.S.*, 130 Ariz. 110, 634 P.2d 398 (Ct.App. 1981) quoting *Harvey v. Aubrey*, 53
2 Ariz. 210, 213, 87 P.2d 482, 483 (1939). In any action, civil or criminal, the burden of proving the
3 applicability of an exemption from registration under the Securities Act falls upon the party raising
4 such a defense. A.R.S. §44-2033. *See also, State v. Barber*, 133 Ariz. 572, 578, 653 P.2d 29
5 (App. 1982).

6 In the Answer and the various motions filed by the Respondent, SCHMIERER stated that
7 the securities he offered qualified for an exemption under the Act, however, SCHMIERER had
8 provided no testimony or evidence to support this statement. SCHMIERER had the opportunity to
9 provide testimony and evidence to support his claims of an exemption but voluntarily chose not to
10 attend the requested hearing. By failing to provide testimony and evidence, the Respondent has
11 failed to overcome the burden necessary to prove the existence of an exemption.

12 **III. The Respondent Does Not Meet The Requirements Of A Statutory Private Offering**
13 **Exemption Under Either Federal or State Law.**

14 Although SCHMIERER did not attend the hearing, Administrative Law Judge Stern
15 requested that the Division address the issues raised by the Respondent in previous motions related
16 to "SEC Regulation D." (H.T. p. 66:17 – 25). The Respondent, through various motions, asserted
17 that his offerings were exempt from the registration requirements because he followed the "SEC
18 Regulation D and therefore is exempt from registration from both the Federal Government and the
19 state of Arizona." Further, Respondent asserts that he qualifies for a "statutory private offering
20 exemption." *See Motion for Immediate Dismissal & Severe Sanctions* filed by SCHMIERER on
21 August 31, 2009.

22 While Respondent references a "statutory private offering exemption" and "Regulation D"
23 in his previous motions, Respondent fails to specify the specific federal or state statutory sections
24 or rules that may apply to the subject offerings. Even if Respondent had specified which statutory
25 sections or rules apply, the offerings do not meet the specific requirements under either federal or
26 state law for the reasons outlined below. Since the Respondent has cited to both federal and state

1 law, the Securities Division will respond to both. The action filed by the Securities Division only
2 addresses violations of the Act.

3 Respondent simply does not meet the requirements under Section 4(2) of the Securities Act
4 of 1933 or A.R.S. §44-1844(a)(1). Section 4(2) of the federal Securities Act of 1933 provides an
5 exemption from registration for “transactions by an issuer not involving any public offering.”
6 Section 44-1844(A)(1) of the Act is the state equivalent to Section 4(2). In order to satisfy the
7 statutory private offering exemption, the securities cannot be sold through advertising and the sales
8 must be made to only a limited number of sophisticated people who have access to the information
9 that would be included in a registration statement. *See SEC v. Murphy*, 626 F.2d 633 (9th Cir.
10 1980).

11 Regulation D of the Securities Act of 1933 outlines two exemptions³ and a “safe harbor”
12 with respect to Section 4(2) of the Securities Act of 1933. Since the Respondent referenced only
13 the terms “statutory private offering exemption” and “Regulation D” in his motions, the Securities
14 Division assumes that Respondent is referencing Rule 506 (17 C.F.R. §230.506(a)) which is the
15 safe harbor to the 4(2) exemption of the Securities Act of 1933.

16 Rule 506 provides a “safe harbor” to the private offering exemption under the Securities
17 Act of 1933. A “safe harbor” is a rule that explicitly states the requirements an issuer must meet.
18 If an issuer complies with all of the requirements of the rule, it will be deemed to have complied
19 with the statute. In this case, if Respondent complied with Rule 506 of Regulation D, the issuer
20 (i.e. Respondent) will be deemed to have met the requirements for the section 4(2) private
21 placement exemption. Offerings of any amount by any issuer to an unlimited number of
22 accredited investors plus 35 “sophisticated” persons are exempt from federal registration under
23 Rule 506. However, Regulation D prohibits the use of general solicitation or general advertising
24

25 ³ Rule 504 and Rule 505 are exemptions from registration for limited offerings on the federal level. A.A.C. 14-4-
26 126(E) is similar to Rule 505, and also outlines exemptions to registration. Although there is no equivalent to Rule 504
under the Arizona Securities Act, a transaction exempt under Rule 504 may be exempt under other provisions of the
Arizona Securities Act.

1 under Rule 506⁴. Respondent does not meet the requirement of Rule 506. As the evidence and
2 testimony provided by the Securities Division at hearing showed, Respondent sought investors
3 over the Internet on numerous different sites. Respondent advertised the details of his offering
4 including a 100 percent return on investment "guaranteed." The offering would be deemed a
5 "public offering" and not eligible for the "statutory private offering exemption."

6 A.A.C. R14-4-126⁵ contains similar provisions as federal Regulation D. Rule 126(F)
7 provides a safe harbor for the A.R.S. §44-1844(A)(1) exemption from registration for private
8 placements. Although Rule 126(F) does not contain limits on the amount of securities offered,
9 general solicitation or general advertising is prohibited.⁶ Respondent does not meet the
10 requirement of Rule 126(F). As shown at hearing, Respondent sought investors over the Internet
11 on numerous different sites. Respondent advertised the details of his offering including a 100
12 percent return on investment "guaranteed."

13 IV. CONCLUSION

14 The evidence presented at the hearing establishes that SCHMIERER, while not being
15 registered as securities dealer or salesperson, offered unregistered securities, within or from Arizona,
16 to prospective Arizona investors. The testimony and evidence show that neither the securities nor the
17 Respondent qualified for an exemption.

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 _____
25 ⁴ 17 C.F.R. 230.502(c), Limitation on manner of offering. "neither the issuer . . . shall offer to sell the securities by any
form of general solicitation or general advertising . . ."

26 ⁵ Id.

⁶ A.A.C.14-4-R126(C)(3), Limitation on manner of offering. "[n]either the issuer . . . shall offer or sell the securities
by any for of general solicitation or general advertising . . ."

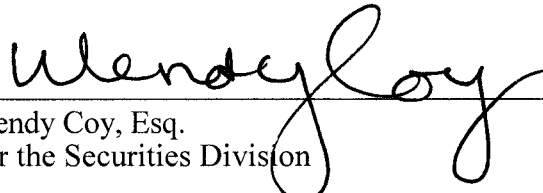
1 Based upon the evidence presented, the Division respectfully requests this tribunal to:

2 A. Order Respondent to cease and desist from further violations of the Act pursuant to A.R.S.
3 §44-2032;

4 B. Order Respondent, pursuant to A.R.S. §44-2036(A), to pay an administrative penalty of not
5 less than \$2,500; and

6 C. Order any other relief this tribunal deems appropriate or just.

7 Dated this 9th day of March, 2010.

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9 
10 Wendy Coy, Esq.
11 For the Securities Division
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1 ORIGINAL AND THIRTEEN (13) COPIES
2 of the foregoing filed this
3 9th day of March, 2010, with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, AZ 85007

8 COPY of the foregoing hand-delivered this
9 9th day of March, 2010 to:

10 Administrative Law Judge Marc Stern
11 Arizona Corporation Commission/Hearing Division
12 1200 West Washington
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed this
15 9th day of March, 2010 to:

16 Kyle Schmierer
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19 By: Vernice Sandoval
20 Legal Assistant
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